

**Zoning Board of Adjustment Public Hearing  
Richmond Veterans Hall**

February 9, 2022

7:00 PM

**Members Present**

Mark Beauregard, Vice Chairman  
Lloyd Condon  
Antoinette Cincotta  
Robert Gow, Alternate

**Members Absent**

Thomas Tague  
Alan Schmidt, Chairman

Public: Dixie Gurian, Keith Hodgman, Janelle Hodgman, David O'Neil, Renee O'Neil, Richard Flagler, Robin Dunn, Steve Dunn, Wayne Imon.

**1. Meeting called to order/roll call:**

Meeting/Hearing called to order at 7:05 PM.  
Vice Chairman Beauregard chaired the hearing.  
Robert Gow was seated for Schmidt.

**2. Map 402 Lot 27: (Variance)**

The proposed application is for a Variance from Article 3: General Provisions under Section 306 Driveways. Map 402 Lot 27 located on Old Homestead Hwy, is owned by Keith and Janelle Hodgman, 26 Delton Drive, Rindge NH. The lot consists of 47.40 acres with two sections of road frontage that wrap around Map 402 Lot 28. There is a driveway permit issued through NH DOT dated 11.22.2021 authorizing a gravel access to be used as a Single-Family Residential drive not wider than 15 feet along the road frontage measuring 69.9 feet. The present gravel entrance measures 8 feet and sits within Richmond Zoning minimal setback of 25 Feet from the side and rear property lines. The remainder of the road frontage south of Map 402 Lot 28 contains 200 feet of frontage and the State of NH DOT would not issue a driveway permit due to line of sight.

Vice Chairman Beauregard asked the applicant to present their application to the public. Applicant Janelle Hodgman asked the ZBA for a variance for their driveway setback. Hodgman explained that the driveway was a preexisting road into the lot for logging purposes. The road needed to be wider to meet town requirements and it sits into the 25-foot side and rear setbacks of Map 402 Lot 28.

Hodgman continued that they are requesting the variance to use the existing road and to add 6 feet North of the existing driveway to expand the width to meet the town requirements. By allowing the proposed variance the increased width could be added to the present driveway minimizing the cutting of trees and the disturbance of the property.

Hodgman referred to a driveway map created by Richard Drew dated 1.7.2021.

Vice Beauregard asked if Hodgman had anything else she wanted to add. She replied no.  
At this time Vice Beauregard asked if anyone from the public would like to speak for the application.

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Dixie Gurian mentioned that she purchased a large parcel in the back of her home in the last 70's consisting of 117 acres that is mostly trees. Gurian was wondering what the vision for the property was. Gurian continued that she has had her home and life in this area since the late 70's and it's a great place to be.

Keith Hodgman spoke to the question stating that with the proposed variance in place they plan to build a house roughly 800 feet back where the access road ends, and the land widens.

Vice Beauregard asked if there was anyone else who wanted to speak for the application.

Richard Flagler wanted to express his concern of the driveway location. Second if there was consideration for the many animals that use the backlands as their habitat. What are the impacts on wetlands and the driveway if it was approved by the State for logging? Flagler was concerned about the public being able to continue to use the trails through the property.

There was no immediate answer to the question of using the trails.

Vice Beauregard asked if there was anyone else who wanted to speak for the application. No one responded. Beauregard asked if there was anyone against the variance. No one responded.

At this time Land Use Assistant read a letter from Elaine and Cornelius Moriarty (see attached) they own Map 402 Lot 28. From reading the letter the only two concerns the Moriarty's had was their propane tanks and well.

There was a brief discussion that the well, propane tanks and septic posed any question then they should be shown on the driveway layout map that was presented by the Hodgman's.

With no further questions Vice Beauregard asked the Zoning Board members if they had any questions.

Condon asked for the floor: Condon noted that at this time the ordinances have changed and there is a setback to the well for construction. The Moriarty well would be grandfathered. Condon noted that if the well or septic are within the setback it should be noted on the map.

Condon added that there is a discrepancy in the acreage of the lot. The application states 47.4 acres and the tax card has 33.3 acres. He continued that was almost 13 acres and he felt this amount posed a problem.

It was suggested that the tax card in the file could be incorrect, the couple were looking at two different parcels very close to each other. Mattson will look at the tax cards at the Town Hall and let the board know if that is the case.

Condon asked the applicant if the well and propane tanks were the only two items that was a concern of the Moriarty's that maybe as a good gesture the Hodgman's could offer to move the tanks back further toward the house.

Cincotta had concern and suggested to Condon that it was not the applicant's responsibility to move the tanks.

Condon continued to clarify that he was asking if they'd be willing to move the tanks to allow a way for both the applicant and abutter to be satisfied. This would be up to the applicant and the abutter not the Zoning Board.

Flagler spoke up that there was 200 feet on the other side of the property why not put the driveway in there?

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Gow mentioned that he took the opportunity to drive by and look at the property before the meeting. The smaller frontage access has a well tracked path with 2 tire tracks. There isn't any access on the south side (200 feet) the terrain is very rough and would take a lot of fill just to bring up to street level.

Cincotta asked for the floor and suggested that the access granted by the State of NH DOT was the only access that could be used to enter the property.

Hodgman clarified and explained that the State would grant a driveway permit for access anywhere along the 69.9-foot access on the North side of the lot. They would not grant a permit for the South side of the lot which was the 200 feet of frontage.

Vice Beauregard suggest that the board needed to do a site walk. Cincotta said that Vice Beauregard couldn't just do a site walk that there were certain procedures that the board need to take. After a discussion it was decided that a site walk to measure the distance from the tanks and well to the edge of the excising road would be the next step, No one knew the location or distance and it was the only two items the abutter showed concern about.

Motion made by Cincotta to accept the variance. The motion was not seconded, discussed, or repeated.

Motion made by Condon to have continue the hearing to a site walk to measure the distance from the well and propane tanks to the edge of the State approved driveway. Seconded by Gow.

Vice Beauregard asked if there was a discussion from the board.

Cincotta wanted to note that a site walk was unnecessary.

Further discussion from the board was that the project including the well and propane tanks should be looked at. The surveyor's markers are present and visible showing the boundary line. The excising driveway can be seen.

Public asked if they could attend and were told they were welcome if approved by the landowners. The Hodgman's had no problem with them attending.

After a brief discussion it was decided to set up the site walk for Friday February 11, 2022, at 4:00 PM to meet at the excising driveway entrance.

All in favor None opposed. No abstentions. Motion carries.

### **3.Minutes of October 13, 2021:**

**Page 1,** Under 2. Map 405, 5<sup>th</sup> section down, second paragraph. Change 39" to 39'.

**Page 2.** Under Variance for Article 6 section 602, second section down, first line change the word in to is. Should read: 1106.2-The use is not contrary to the spirit. Same paragraph line 4 change the word change to chance. Should read: It will have a far less chance of any pollution factors.

**Page 3.** Under 1106.5.1.2-, first line change the letter n to is. Should read: The proposed use of the building is manly for storage.

**Page 6.** Under 4 Board Discussion add: Lloyd Condon left the meeting.

Motion made by Condon to accept the minutes as amended. Seconded by Cincotta. All in favor. None opposed. Motion carries.

#### **4. Other:**

##### **1. Taping of meetings:**

Vice Beauregard wanted to address the ongoing controversy in relation to taping the ZBA meetings for a governmental record to be housed, upgraded and safely kept by the town.

Vice Beauregard asked Cincotta if she started taping before the meeting. Cincotta show Vice Beauregard that she could electronically turn the tape off and on from her seat and she did not start taping before the meeting was called to order.

Vice Beauregard continued by ready a reply from the NH Municipal Association (NHMA).

RSA 91-A:4, II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

RSA 33-A:3-a, LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.

RSA 91-A:5, VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

Reading those three provisions harmoniously would result in:

Any recording used for the preparation of the minutes is a “record” and subject to disclosure.

Any recording not used for the preparation of the minutes is not a “record” and is not subject to disclosure. However, if said recording is played or otherwise introduced as part of the discussion on whether minutes are accurate, then it is likely that the recording has become available to a quorum of the public body in furtherance of its official function and, as a consequence, is now a governmental “record” subject to disclosure.

Because of the complications, the best practice would be for board members to record a meeting only if the purpose is to turn that recording over to the municipality as a governmental record.

After reading the response from the NHMA Vice Beauregard responded that he disagreed with the recording of the ZBA meetings. He continued that the recordings should be for Cincotta’s personal use and should not be bought forth at any of the ZBA meetings/hearings.

Cincotta disagreed and said that the minutes were grossly inaccurate and that the taping would be of great assistance when creating the written record of meetings. Cincotta mentioned that the right to record law enables us to record and she has participated in thousands of meetings that have been recorded.

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Cincotta went on to discuss how she was misrepresented at the cell tower hearing when she was confused with another participant.

Motion was made by Vice Beauregard to not have recordings of the ZBA meetings. Seconded by Condon.

Gow asked for the floor and responded that he has been involved in many instances more than he cared to. It was his opinion that the recordings usually were only for the advantage of the person recording. Gow continued that it cuts back on participation as they don't want to much to be part of the record and it limits the expression of the board.

Cincotta said it is a public hearing and we should present ourselves as if as if the whole town were present. Just like a public trial. We should always be on our best behavior. Public hearing is much like a bench trial.

At this time there was a call for a vote to the motion. Land Use assistant suggested amending the motion for board use.

Vice Beauregard amended his motion to read:

To not have recordings of the ZBA meetings for board use. Seconded by Condon.

Three in favor. One opposed. No abstentions. Motion carries.

### **2. Rules of Procedure:**

Cincotta presented and read the Rules of Procedure, Richmond Board of Adjustment (2013), fourth section down under MEETINGS.

#### Meetings

1. Regular meetings will be held on the second Wednesday of each month at 7:00 PM at the Civil Defense Building or the Veterans Hall as determined by Public Notice. Other meetings may be held on the Call of the chairman provided public notice and notice to each member is given in accordance with RSA 91-A:2,II.

Land Use Assistant emphasized that the rules said determined by Public Notice. Cincotta responded that that phrase had to do with the second part. No further discussion.

Motion made by Condon to adjourn. Seconded by Gow. Three in favor. One opposed. Motion carries.

Meeting adjourned at 8:23 PM.

Respectfully submitted,

Kandace Mattson